

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

GARY L. HILL

§

V.

§

C. A. NO. C-02-235

AVRIAN MENDEZ

§

§

§

ORDER DENYING WITHOUT PREJUDICE
PLAINTIFF'S MOTION FOR A TRIAL TRANSCRIPT

Plaintiff, a prisoner proceeding *pro se* and *in forma pauperis*, filed this lawsuit pursuant to 42 U.S.C. § 1983, alleging that defendant violated rights secured under the Constitution. A two-day jury trial was held in July 2004 with a verdict in favor of defendants. (D.E. 106). On July 22, 2004, final judgment was entered. (D.E. 107). Pending is plaintiff's motion for a trial transcript. (D.E. 119).

Plaintiff has previously filed a motion for a trial transcript. (D.E. 110). At that time, he had neither filed a notice of appeal, nor sought leave to proceed on appeal *in forma pauperis*. (D.E. 111). On August 6, 2004, the Court issued an order denying this first motion without prejudice. *Id.* Plaintiff was instructed to "specify the issue(s) he intends to raise on appeal, and why the production of the transcript is necessary in order to argue each point" if he refiles his motion. *Id.* at 1-2.

Plaintiff filed a notice of appeal. (D.E. 112). He also filed a motion to proceed *in forma pauperis*. (D.E. 114); see also (D.E. 115).

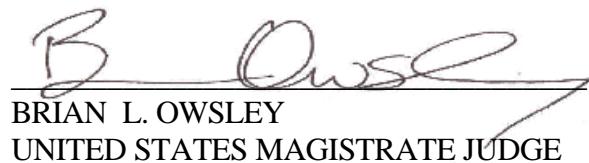
Fees for transcripts furnished to persons permitted to appeal *in forma pauperis* shall be paid by the United States if the trial judge or circuit judge certifies that the appeal is not frivolous (but presents a substantial question). 28 U.S.C. § 753(f). Plaintiff has still failed to specify which issues he plans to raise on appeal, as instructed in the previous order. See Norton v. Dimazana,

122 F.3d 286, 293 (5th Cir. 1997). Therefore, the Court cannot certify whether his appeal is not frivolous.

Payment by the United States for printing of the record on appeal and transcript may also be ordered if the record or transcript is required by the appellate court. 28 U.S.C. § 1915(c); Harvey v. Andrist, 754 F.2d 569, 571 (5th Cir. 1985). The United States Court of Appeals for the Fifth Circuit has not indicated that it requires a transcript of any of the proceedings in this case.

Accordingly, plaintiff's motion for preparation of the transcript at the expense of the United States, (D.E. 119), is DENIED without prejudice. If plaintiff refiles his motion for transcript, he should specify the issue(s) he intends to raise on appeal, and why the production of the transcript is necessary in order to argue each point. Failure to provide such information may result in sanctions awarded against plaintiff.

ORDERED this 19th day of July 2005.



BRIAN L. OWSLEY
UNITED STATES MAGISTRATE JUDGE